

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,577
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services, Division of Licensing, to revoke his foster care license.

FINDINGS OF FACT

1. The petitioner has been licensed as a foster care provider since January of 1997, although he supervised a boy who needed a place to live with the permission of the Department for a few months before that. He operates a horse ranch, has been through foster parent training, and was originally licensed for two children. In the fall of 1997, that license was increased to four children and he has had several teenaged boys placed with him under that license. Most of these children have criminal backgrounds and problems with authority figures.

2. Most recently, three teenage boys, K., G., and A., were placed with the petitioner. They each had long criminal records and problems with authority and good judgment. In addition to supervision by SRS social workers, these boys received contract services from the county mental health organization.

3. At some point in the spring of 1997, the

petitioner developed personal difficulties with one of the mental health workers whom he felt was sexually harassing him. Although the difficulty was resolved when the worker moved away late in the summer of 1997, the petitioner had become irritated with his general treatment by persons at the county mental health. In the spring of 1998, he complained about the actions of that mental health worker to one of the children's SRS workers and also complained to her about another social worker. The complaints were lodged within earshot of one or more of the boys. The SRS worker told the petitioner that it was inappropriate to disparage the workers in front of the boys. She referred the incident to the resource coordinator at SRS, the person who trains foster parents. It was her hope that the resource coordinator could work with the petitioner about eliminating this behavior that she felt made it difficult for SRS to do its job.

4. Prior to this occurrence, the Department had some concerns about the petitioner as a foster parent but nothing serious enough to warrant moving the boys or revoking his license. It was the social workers' belief that this latest matter could be worked out as well. The petitioner had expressed very vocal concerns from time to time with the SRS workers about management of the boys but they were generally worked out through established processes including monthly case meetings. At one point, the SRS worker took the

petitioner's advice about extending additional privileges to one of the boys after he had advocated for him. In general, SRS was pleased with the progress the boys had made in the petitioner's care and felt he was a good foster parent for them.

5. On June 20, 1998, one of the boys, K., "rented" a car from the girlfriend of another one of the boys, G. The girlfriend happened to be the daughter of one of the mental health workers who was assigned to the boys. K. had no license and proceeded to severely damage the car by rolling it over, although neither he nor anyone else was hurt. When the girlfriend's parents arrived on the scene, a heated confrontation occurred between them and the petitioner which resulted in the petitioner ordering the mental health worker and her husband off of his property and his telling the mental health worker that he was not going to take any more grief from her.

6. The petitioner reported this incident immediately to K.'s SRS worker by telephone. During the course of the conversation, he related how much he hated the mental health worker. The SRS worker could hear the boys talking in the background during this conversation and asked the petitioner to stop talking about her in such a way before the boys. The SRS worker gave the petitioner the name of K.'s court appointed lawyer.

7. Two days later, the petitioner came into the SRS

office and spoke to G. and A's SRS worker. He was upset and complained vociferously about the accident. The worker urged him to calm down and try to work it out with mental health. She gave the petitioner the names of G. and A.'s court appointed attorneys.

8. After this incident, there was growing anxiety on the part of both the boys and the petitioner that the SRS workers might try to change their placement. This was a very difficult idea for the boys to contemplate because they had been in many foster care homes and liked living with the petitioner. In fact, there was no plan to change the placement and SRS never indicated such to either the petitioner or the boys.

9. At some point, the boys confided their anxiety to D.B., a woman who was training her horse at the petitioner's ranch. D.B. worked as a paralegal for an attorney in White River Junction, over sixty miles away from the petitioner's home. D.B., who has been a member of government-sponsored child advocacy boards and has done informal mediation for special needs children in schools, became determined to find out whether the boys had any legal right to stay in the petitioner's home. Although she was aware through her work with juveniles that they likely had court-appointed attorneys, she did not refer the boys to those attorneys.

Instead, she asked her boss, the attorney in White River

Junction, to look into the matter of their potential rights.

10. Thereafter, her boss, who is also the attorney who handled this matter for the petitioner before the Board, became involved with the petitioner and the boys. It is less than clear how this came about. The petitioner claims that he contacted the attorney to represent him with regard to any legal liability he might have regarding the accident. He says that he asked him to look into what K's liability might be with regard to the accident but denies that he sought assistance with regard to the boys' legal rights with SRS. The attorney, for his part, says that he never agreed to represent any of the boys with regard to SRS but had advised the petitioner to tell them to say nothing to anyone until he had a chance to check out their legal status. He says he gave them this advice because of the potential liability in the accident situation although A. and G. were not involved in the accident.

11. What is clear is that all three of the boys, K., G., and A., somehow believed that the petitioner's attorney was their attorney and that he had advised them not to talk to anyone about anything without an attorney present. After reading the handbook for children in foster care (which the petitioner says he keeps on the kitchen table), it was their understanding that they had a right to have an attorney present when they talked to anyone, including their SRS workers. The petitioner agreed with the boys'

interpretation of the handbook and supported them in asserting their rights, as they understood it.

12. On June 25, 1998, the day of a scheduled monthly review meeting regarding K., the petitioner called the SRS worker and said that K. refused to come because he did not want to talk without his attorney present due to the car accident. The SRS worker said that they did not need to talk about the car accident and encouraged the petitioner to bring the boy. When the boy continued to refuse, the worker advised the petitioner to come to the meeting without him, which he did. When he arrived, she asked the petitioner why the boy had obtained a new attorney and was told it was because he was angry. The worker knew that K. was angry about his mother's refusal to allow him to return home but she was not aware that K. was angry with SRS. The petitioner refused to elaborate but gave the SRS worker the name of K's attorney. The SRS worker called the attorney that day who told her he had advised the boy not to talk to anyone without a lawyer present until he could straighten out the business about the accident.

13. A couple of days later, G.'s SRS worker tried to call him for her weekly check-in and was told by him that he would not talk to her without an attorney present. The worker thought she heard the petitioner's voice on the extension telling the boy to hang up but the petitioner denies he was in the house that day. It cannot be found on

such scant evidence that the petitioner did advise the boy to hang up.

14. Shocked and concerned about her inability to communicate with G., the SRS worker went to her supervisor who, after consulting with the Department's attorney and the assistant Commissioner, called the petitioner. The petitioner confirmed that the boys refused to talk to the workers without their attorney and that he felt compelled to back them up in that circumstance because he had been trained to support the children.

15. Up until this point it does not appear that anyone--petitioner, children, or social workers-- had been in touch with the court-appointed attorneys who had represented the children in the foster care proceedings. One of the SRS workers finally called one of the court-appointed attorneys and the Department's own attorney who both advised removing the children at once from the petitioner's care for their own safety.

16. The Department, unsure what they were dealing with or what kind of resistance they might meet, called and asked for police assistance in removing the children from the home. A police cruiser with three officers went to the home and removed the children without incident the afternoon of June 26, 1998. The petitioner was not present when this occurred.

17. The Department immediately initiated an

investigation to see whether the petitioner's foster care license should be revoked. The investigation was conducted by a Department worker who conducted interviews with everyone involved including the petitioner. The petitioner complained that his interview, which was largely held in the presence of his attorney, did not focus on these issues. It appears that the interview largely centered on the petitioner's disturbance with the Department's actions in removing the boys from his care. This appears to be both because that was the petitioner's main concern and because the investigator did not completely understand the grounds upon which the revocation was to take place and failed to ask pertinent questions.

18. By this point the petitioner's attorney had contacted the boys' court-appointed attorneys and had made a decision not to represent them himself. Subsequently, the petitioner moved for a hearing before the Court to try to have the children returned to his home. The judge determined that it was in the best interests of one of the boys, A., to return to the petitioner's home. Because the Department told the court that it intended to revoke the petitioner's foster care license, the boy was placed in the temporary custody of the petitioner with SRS supervision. The judge sidestepped any involvement with the revocation process, instead focussing on the needs of the boys before

her.

19. Following the license investigation, a recommendation of revocation was made by the licensing supervisor to the Commissioner. The Commissioner held an informal hearing at which time the petitioner and his attorney were apprised of the grounds for the revocation and given a full opportunity to respond. Following his hearing, the Commissioner determined to approve the revocation of the petitioner's license based upon the violation of regulations requiring foster parents to exercise sound judgment and cooperate with SRS in carrying out the case plan. The petitioner was informed of this decision in writing on October 22, 1998. In support of these allegations the Department cited the petitioner's vocal criticism of mental health workers in front of the boys which the Commissioner felt undermined their ability to deal effectively with the boy's problems; the failure to the petitioner to inform the Department of the boys desire to obtain new attorneys; his support of the boys' refusal to have contact with their SRS workers; and his fostering a general atmosphere of distrust between the boys and the Department.

20. In an affidavit submitted by the petitioner on June 18, 1998, to the Superior Court in connection with the motion to have the children returned, the petitioner characterized the mental health workers as "making his life a hell" and "slamming their weight around." He described

SRS as accusing one of his foster children of being a "monster" and "treating him like an animal". The affidavit described a situation in which it was the boys and the petitioner against the mental health and SRS workers who were mistreating them and could not be trusted. During the course of the hearing held on the license revocation, the petitioner continued to exhibit a good deal of contempt for the SRS workers who had dealt with the children, at one point calling them "scared little dogs."

21. The petitioner's attorney asked that the petitioner be exonerated of blame because he had given him bad advice about the boys' rights. However, although he has had over a year to reflect on his actions, the petitioner continues to believe that the children were within their rights in refusing to talk with the SRS workers without their attorneys present and that he was right to back them up in this. He was unable to offer, when asked by the Department, the regulation he relied upon for this belief. He protested that he has always cooperated with the Department because he has attended all training sessions and meetings regarding the boys and all children in his care and that the Department's revocation made no sense because he had been a good foster parent.

ORDER

The decision of the Department to revoke the petitioner's foster care license is reversed.

REASONS

The Commissioner of the Department of Social and Rehabilitation Services is charged by the legislature with the administration of the foster care program. See, generally, 33 V.S.A. § 304(b)(2), and 3501. The statutes specifically give the Commissioner the duty and authority to:

. . .

issue regulations governing application for, and issuance, revocation, term and renewal of licenses and registration. In the regulations he may prescribe standards and conditions to be met, records to be kept and reports to be filed.

33 V.S.A. § 306(1)

Pursuant to this authority, the Department has adopted regulations that include the following:

201.5 [Applicants and licensees shall exhibit]: Sound judgment.

322 Foster parents shall cooperate with the child placing agency in case planning and in carrying out the case plan.

In this case, the Commissioner determined that the behavior exhibited by the petitioner was a violation of these two regulations and that the violation was severe enough to warrant revocation of the petitioner's foster care license. While it is generally within the Department's

statutory discretion to determine the appropriate action to take with regard to any violation of its regulations, the Board can overturn the Department's decision if the evidence establishes that it constitutes an abuse of that discretion. Based on the above findings of fact, the majority of the Board concludes that it was an abuse of discretion for SRS to revoke the petitioner's foster care license primarily because of an incident that the Department had the ability, and duty, to mitigate and resolve before it escalated to the point it did.

The evidence shows that before the incident that led to the removal of the children in the petitioner's care, SRS considered the petitioner to be a valuable foster care provider to children with very demanding and difficult needs. The evidence also shows that the petitioner, at all times during the incident, was acting on the advice of an attorney, and told the Department so. Even if this advice was questionable, SRS knew the identity of the petitioner's attorney, but made no attempt to contact him.

SRS also had no reasonable basis to believe that the children in question were in any imminent danger during this time. Indeed, it has not been shown that any child in the petitioner's care ever suffered any harm while in his care.¹

Under these circumstances, the majority concludes that

¹ To the contrary, it appears that the Family Court concluded at the time that at least one child was to be immediately returned to the petitioner's care.

SRS's actions at that time were a gross overreaction to the perceived problem, and that the Department's failure to acknowledge the rashness of its actions has been the primary cause of any lingering distrust and hostility toward SRS on the petitioner's part. To now revoke the petitioner's foster care license because he harbors continuing resentment over these actions is overly punitive.

In this decision the Board is not holding that foster parents can willingly disobey SRS in the handling and supervision of children in their care. However, when, as here, it is shown that a foster parent was making a good-faith judgement call based on the advice of an attorney, it must be concluded that it is unreasonably harsh for the Department to revoke that foster parent's license unless it can demonstrate that it took reasonable steps to resolve the matter in a less-precipitous way. In this case, that evidence is woefully lacking. Therefore, the Department's decision is reversed.

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